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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,017	08/20/2003	Richard Guzman		6940

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EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/644,017

Applicant(s)

GUZMAN ET AL.

Examiner

Christopher J. Novosad

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 082003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

Claims 8-13 have been canceled by the preliminary amendment filed August 20, 2003.

### ***Continuation Examination***

No statement is present at the beginning of the specification that states that "This application 10/644,017 is a continuation of application number 10/341,251, filed on January 14, 2003, now abandoned, which is a division of application number 09/759,270, filed on January 16, 2001, now U.S. Patent No. 6,513,447."

### ***Inventorship***

The request for the deletion of an inventor in this nonprovisional application under 37 CFR 1.48(b) is deficient because:

It lacks the required fee under 37 CFR 1.17(i).

The request was not accompanied by the statement required under 37 CFR 1.48(b)(2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kinkead *et al.* in view of Rogers.

With respect to claim 1, Kinkead *et al.* show a method of improving plant growing conditions over a specified area of soil, comprising the steps of:

aerating the soil of the specified area by punching uniform holes via 312,316 in a uniform pattern in the area;

applying a selected granular aggregate (seed) uniformly over the area to at least partially fill the aerating holes;

applying soil amendments (top dressing) uniformly over the area; and

smoothing the area using member 318 to even the distribution of the applied selected granular aggregate (seed) and cause the surface of the area to have a smooth appearance.

Claim 1 distinguishes over Kinkead *et al.* in requiring a drag mat to be used for the smoothing step.

Rogers discloses that a “drag or other attachment may be towed behind the discs 26 if desired to help fill the trenches 78 with dirt” in col. 4, lines 57-59.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a drag as disclosed in Rogers in place of the brush 318 of Kinkead *et al.* for greater and more uniform smoothing.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kinkead *et al.* in view of Rogers as applied to claim 1 above, and further in view of Paige *et al.*

Kinkead *et al.* show the method as noted.

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Claim 2 distinguishes over Kinkead in requiring the additional step of moistening the area with water before aerating the soil.

Paige *et al.* disclose “watering” in col. 1, line 8 and “spray pipes 27 having nozzles 28 at the forward ends thereof” in col. 5, lines 14 and 15.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have moistened the area with water as shown in Paige *et al.* before aerating the soil with the apparatus of Kinkead *et al.* for improved soil manageability.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kinkead *et al.* in view of Rogers and further in view of Paige *et al.* as applied to claim 2 above, and further in view of Cole *et al.*

Kinkead *et al.* show the method as noted.

Claim 4 distinguishes over Kinkead *et al.* in requiring the soil amendments to include compost.

Cole *et al.* disclose in col. 1, lines 15 and 16 “compost, which is especially useful as a soil amendment”.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized compost as a soil amendment as disclosed in Cole *et al.* for economy and for soil improvement.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kinkead *et al.* in view of Rogers and further in view of Paige *et al.* as applied to claim 2 above, and further in view of Palmer.

Kinkead *et al.* show the method as noted.

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Claim 5 distinguishes over Kinkead *et al.* in requiring the soil amendments to include fertilizer.

Palmer discloses in col. 1, line 52 “soil amendment including fertilizers”.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized fertilizer as a soil amendment as disclosed in Palmer for economy and for soil improvement.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kinkead *et al.* in view of Rogers and further in view of Paige *et al.* as applied to claim 2 above, and further in view of Cole *et al.* and Palmer.

Kinkead *et al.* show the method as noted.

Claim 6 distinguishes over Kinkead *et al.* in requiring the soil amendments to include compost and fertilizer.

Cole *et al.* discloses in col. 1, lines 15 and 16 “compost, which is especially useful as a soil amendment”.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized compost as a soil amendment as disclosed in Cole *et al.* for economy and for soil improvement.

Palmer discloses in col. 1, line 52 “soil amendment including fertilizers”.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized fertilizer as a soil amendment as disclosed in Palmer for economy and for soil improvement.

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Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kinkead *et al.* in view of Rogers as applied to claim 1 above, and further in view of Andersen *et al.*

Kinkead *et al.* show the method as noted, including application of a granular aggregate (seed).

Claim 3 distinguishes over Kinkead *et al.* in requiring the granular aggregate to be sand.

Andersen *et al.* disclose in col. 25, lines 1-7 that “Examples of useful aggregates include...sand...seeds”.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized sand as an aggregate as disclosed in Andersen *et al.* in place of the seed of Kinkead *et al.* for economy.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kinkead *et al.* in view of Rogers as applied to claim 1 above, and further in view of Japanese reference ‘666.

Kinkead *et al.* show the method as noted, including application of a granular aggregate (seed).

Claim 7 distinguishes over Kinkead *et al.* in requiring a mycorrhizal fungus to be applied before the application of the granular aggregate.

Japanese reference ‘666 discloses in lines 3-7 of the constitution thereof that “mycorrhizal fungus...are inoculated into the soil, [then] seeds of a plant such as dent corn are sowed”.


It would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied mycorrhizal fungus before planting seeds as disclosed in Japanese reference ‘666 for greater yields.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 703-308-2246. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad  
Primary Examiner  
Art Unit 3671

August 2, 2004